

THE ICE INDUSTRY CODE

With

Explanations and Suggestions From
the Code Authority and
Regional Advisors

WASHINGTON, D. C.

Published With the Authority of the
Industry Administrator

By the

CALIFORNIA ASSOCIATION OF ICE INDUSTRIES

October 16, 1933

CODE OF FAIR COMPETITION

for the

ICE INDUSTRY

ARTICLE I, DECLARATION OF PURPOSES

To effectuate the policy of Title I of the National Industrial Recovery Act by reducing unemployment, improving the standards of labor, establishing a reduction in working hours, eliminating practices inimical to the interests of the public, employers and employees, removing from this industry any existing obstructions to the free flow of commerce and thereby increasing purchasing power, to bring wages paid in the industry to such levels as are necessary for the highest standards of living attainable, to revise wage scales from time to time to reflect changes in living costs, to restore to the members of this industry their income on a level which makes possible the payment of such wages, and to promote the general welfare, the following provisions are established as a Code of Fair Competition for the Ice Industry.

ARTICLE II, MEMBERSHIP

Any member of the Ice Industry is eligible for membership in the National Association of Ice Industries, and is entitled to all the benefits thereof upon the acceptance by such member of a reasonable share of the cost and responsibility of the Code development and administration. No inequitable restrictions on admission to membership shall be imposed by any trade association or group who are members of the Ice Industry and the provisions of this Code shall not be applied to promote monopolies or monopolistic practices or to eliminate or oppress small enterprises or discriminate against them.

ARTICLE III, DEFINITIONS

Section 1. Wherever used in this Code the terms hereafter defined shall, unless the context shall otherwise clearly indicate, have the respective meanings set forth. The definition of any such term in the singular shall apply to the use of such term in the plural and likewise the definition of any such term in the plural shall apply to the singular.

Section 2. The following definitions are adopted for the purpose of this Code.

a. The term "The United States" shall mean the forty-eight (48) states and the District of Columbia exclusive of its territories and insular possessions.

b. The term "The President" means the President of the United States of America.

c. The term "Administrator" means the official appointed by the President to administer the National Industrial Recovery Act.

d. The term "Code Authority" means the planning and coordination agency constituted in compliance with the provisions of Article X, Section 1.

e. The term "The Industry" means and includes the production, manufacture, harvesting, selling or distributing and/or merchandising of ice at wholesale or retail.

f. The term "Unit Ice Association" means an organized group of members of the industry representing a market or a geographical division.

g. The term "Member of the Industry" means and includes any person, firm, association or corporation engaged in the manufacture, harvesting, production, or distribution or selling of ice at either wholesale or retail; however, no provision of this Code shall apply to any member of the Ice Industry producing, manufacturing, harvesting, selling, distributing and/or merchandising ice in the insular possessions of the United States.

h. The term "Product" means manufactured and/or natural ice.

i. The term "The Code" means and includes this Code as originally approved by the President and all amendments hereof and thereof made as hereinafter provided.

j. The term "Employee" as used herein includes any person engaged in any phase of the Ice Industry in any capacity in the nature of employee, irrespective of method of payment of his compensation.

k. The term "Employer" shall mean all persons who employ labor in the conduct of any branch of the Ice Industry as defined above.

l. The term "Effective Date" means the second Monday following approval of this Code by the President.

m. The term "Point of Sale" shall mean the plant, platform, station or piece of delivery equipment from which the seller makes delivery of ice to the buyer.

n. The term "Peddler", means a non-manufacturing distributor who buys ice and resells and delivers same to the commercial or domestic trade from any character of commonly used ice delivery equipment.

o. The term "Dealer" is one who purchases ice and who resells same either direct to the commercial or domestic trade or to others who in turn resell same to the commercial or domestic trade.

ARTICLE IV, LABOR PROVISIONS

Employers in the Ice Industry shall comply with the requirements of the National Industrial Recovery Act as follows: (a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection: (b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing: (c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

ARTICLE V, HOURS

No office or clerical employees in the Ice Industry shall be employed for more than forty (40) hours in any one week, nor more than eight (8) hours in any one day.

Employees, other than office, clerical and those exercising executive or supervisory functions, shall not be employed for more than a forty-eight (48)

hour week averaged over a twelve (12) months' period provided, however, that such employees shall not be employed for more than fifty-six (56) hours in any one week. Nothing in this provision shall allow any employer to employ one man for a continuous period of fifty-six (56) hours and then replace him with another man on the same job and work the latter for a period of fifty-six (56) hours. It is the intent of this clause that the time consumed through the operation of one shift on any one job shall not exceed fifty-six (56) hours in any one week and shall not average over forty-eight (48) hours per week for any twelve (12) months' period: and provided further that where the weekly hours of work were less than the maximum on July 15, 1933, such hours shall in no case be increased.

Exceptions for supervisory functions, as set out in the paragraph above, shall include those employees whose principal duties consist of the direction and supervision of work of other employees, and who have continuous employment, at no reduced weekly compensation on account of the off-season, provided that the number of employees so classified shall in no case exceed in numbers one (1) for every seven (7) or fraction thereof of the total number of employees in any manufacturing and/or distributing operation where the number of employees is four (4) or more and provided further that such supervisory employees shall not be paid less than thirty dollars (\$30.00) per week in the north or less than twenty-five dollars (\$25.00) per week in those states hereinafter designated as South.

To the extent that an owner, partner, stockholder, manager, dealer or person exercising supervisory functions performs any of the functions of labor, the hours of which are restricted under this Code, and to the extent that a non-manufacturing distributor (commonly known in certain sections of the country as a peddler) or person employed solely in selling and paid solely on commission, performs the functions of labor in distribution and service to the public, such persons, while performing such labor, shall be bound to observe the maximum hours herein prescribed for employees of the particular class of labor performed.

No employee shall work, or be permitted to work, for a total number of hours in excess of the number of hours prescribed whether he be employed by one or more employers.

ARTICLE VI, WAGES

No employee shall be paid less than thirty-two and a half cents ($32\frac{1}{2}\phi$) per hour, except that in the South, which is defined to include Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia, no employee shall be paid less than twenty-three cents (23¢) per hour: Provided that in the South, as defined above, drivers' helpers, the number of which shall not be in excess of the number under regular employment July 15, 1933, shall be paid not less than eighty percent (80%) of the minimum rates, provided, that where the basic hourly rates of pay on July 15th, 1933, were greater than the minimum rates set out above, such rates shall not be reduced on account of the application of any of the provisions of this Code. A minimum rate of pay is hereby established regardless of whether the employee is compensated on the basis of a time rate or on piece work performance, except, that there shall be exempt from this provision persons employed solely on selling and paid solely on commission and provided further that employers shall not re-classify employees so as to defeat the purposes of the National Industrial Recovery Act.

Equitable adjustment in all pay schedules of employees above the minimum shall be made on or before the effective date of this Code.

ARTICLE VII, CHILD LABOR

Employers in the Ice Industry shall not employ, or have in their employ, any person under the age of sixteen (16) years of age, provided, however, that where a state law specifies a higher minimum age, no person below that age, so specified by such law, shall be employed in that State.

ARTICLE VIII, POSTING NOTICES

All members of the Ice Industry shall post and keep posted in a conspicuous place on the premises, a written copy of the provisions of this Code relative to maximum hours and minimum wages, as set out in Articles V and VI of this Code and one such copy shall be in the English language and there shall be as many other and additional copies in languages other than the English language as may be necessary to properly advise employees of compliance concerning the above provisions of this Code.

ARTICLE IX, ACTS OF UNFAIR COMPETITION

Section 1. For all purposes of the Code, the acts described under Section 2 of this article shall constitute unfair practices. Such unfair practices and all other practices which shall be declared to be unfair practices by any amendment to the Code at the time in effect, shall be deemed to be unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended, and the using or employing of any of them shall be deemed to be a violation of the Code, and any member of the Industry which shall directly or indirectly through an officer, employee, agent or representative, employ or cause to be employed, any such unfair practices shall be guilty of violation of the Code.

Section 2. For all purposes of this Code, the following described acts shall constitute unfair practices.

- a. Selling ice or services below the cost of such production or service.
 - (1) Cost is defined to include raw materials, transportation thereof, manufacturing, harvesting, storage, shrinkage, delivery, depreciation, merchandising, administrative expense, insurance and taxes, as determined by standard accounting practice recognized in the Industry and approved by the Administrator and the Code Authority for the enforcement of this Code.
- b. Selling ice at a price lower than the price prescribed in duly published schedules.
- c. Establishing or changing price schedules without having first complied with the applicable provisions of Article X relative to the filing and publishing of price schedules.
- d. Selling ice to one or more purchasers at other and different prices than those charged other purchasers of the same class and of similar conditions of service.
- e. Giving any form of rebate including stocks, cash, overweight exceeding five percent (5%), special services of any character, special price on other products, advertising allowances, or exchange of ice for other products.
- f. Mislabeling, misbranding, false or misleading advertising and the making of false invoices.
- g. The giving of any form of commercial bribery.
- h. Making guarantees against advance or protection against decline in prices.
- i. Making disparaging statements known to be false concerning a competitor, his product, service or his merchandise.

j. Enticement of a competitor's employees, provided that no employee shall be refused employment for the reason that he was employed by another employer in the Industry.

k. Making or issuing misleading guarantees.

l. Diverting from their normal markets into any market ice produced from plants primarily operated for some specific use other than the manufacture of ice for sale in the domestic and commercial markets, and the practice of producers or vendors of selling ice into other than their basic or normal markets, channels or territories, are condemned by the Industry as unfair methods of competition in all cases in which such transactions are conducted otherwise than in compliance with the following restrictions:

(1). Such ice cannot be sold below the lowest published schedule of prices obtaining in the market or territory in which such ice is offered for sale, and the price paid for such ice by peddlers or dealers shall not be lower than the lowest published dealer or peddler price in the market into which such dealer or peddler sells such ice, regardless of what may be the price to dealer or peddler in the normal territory or market out of which such ice is moved.

(2). Such ice cannot be sold below the average cost of production and distribution of all ice produced, sold or distributed by the producer or seller, plus the cost of transportation to the points of ultimate sale or delivery.

(3). Such ice cannot be sold for lower prices than those being secured by the producer or seller in his normal or basic market.

(4). Such ice must be sold under the same service conditions as to off-season sales and as to protection of customers through proper storage as are established by any of the ice producers, dealers or distributors in competition with whom such ice is designed to be placed.

The sale of ice by a producer or dealer with the knowledge that such ice is purchased with the intention of reselling the same in violation of the terms of the provisions herein is an unfair trade practice, the same as if the seller of such ice had engaged in an unlawful sale direct or through his employed agents.

The determination of what constitutes "normal market, use, channel or territory" shall be made by the Code Authority, with the approval of the Administrator.

ARTICLE X, ADMINISTRATION

Section 1. The Code Authority.

A planning and coordinating committee, consisting of eight members is hereby declared to be the Code Authority to act as a planning and fair practice agency for the Ice Industry to cooperate with the Administrator in the administration and enforcement of this Code. This Code Authority shall be constituted as follows:

(a) Not more than three members without vote as may be hereinafter provided by any rule or regulation promulgated under the authority of the National Industrial Recovery Act appointed by the Administrator.

(b) Five members selected by the National Association of Ice Industries and approved by the Administrator. Vacancies caused by resignation or incapacity shall be filled by selection by the Executive Committee of the National Association of Ice Industries with the approval of the Administrator.

The Code Authority may, from time to time, present to the Administrator recommendations for amendments to this Code or for other action based upon conditions of the Industry which will tend to effectuate operation of the provisions

of this Code and the policy of Title I of the National Industrial Recovery Act.

The Code Authority with the approval of the Administrator may delegate any of its functions and powers under this Code to such committees, officers, agents or employees as it may designate or appoint.

Section 2. Regional Advisors.

In each of the ten territorial divisions of the National Association of Ice Industries covering the entire United States, the Code Authority shall designate some one individual to act as its territorial assistant in such division; said individual shall be selected by the National Association of Ice Industries and appointed by the Code Authority with the approval of the Administrator, and shall be designated as the Regional Advisor for such division.

The Regional Advisor shall be the representative in his division of the Code Authority. He shall be a member ex-officio of each Committee of Arbitration and Appeal, hereinafter described, of the various Unit Ice Associations within his divisional territory. All recommendations of each Committee of Arbitration and Appeal within his divisional territory shall be submitted immediately to the Regional Advisor and it shall be his duty to transmit such findings, together with his recommendations covering them to the Code Authority.

Section 3. Committees of Arbitration and Appeal.

Within the territories embraced by the existing Unit Ice Associations, covering the entire United States, and by such other unit ice associations as may be hereafter organized, and with open rights of participation extended to all members of the industry within the territory, whether members of an association or not, a committee of Arbitration and Appeal may be created, which committee shall, subject to the approval of the Administrator, interpret this Code and make application of it within its territory, prescribe practices for making effective the intent of the Code in the territory, hear controversies arising out of the application of the Code and to make recommendations thereon to the Code Authority and after being notified of violations of this Code, investigate the same and make recommendations to the Code Authority relative to what action should be taken. The members of this Committee of Arbitration and Appeal for each of the Unit Ice Associations in number shall not be less than three or more than seven and shall be appointed by the Code Authority from a representative list of nominees submitted by the Unit Ice Association.

It shall not be necessary for the members of these committees of Arbitration and Appeal to be members of the National Association of Ice Industries.

Section 4. Posting and Filing Schedules.

Every member of the Industry, shall be required to post on the effective date of this Code and to file with the Code Authority and with the Committee of Arbitration and Appeal in his particular territory within fifteen (15) days of the effective date of this Code, and thereafter keep posted, at each point of sale, a complete schedule of prices applicable to all transactions carried on, according to accepted trade classifications. These prices cannot be changed without notification to the Code Authority and to the Committee of Arbitration and Appeal, fifteen (15) days in advance of the effective date of such changes. Upon the effective date thereof any changed schedule of prices shall be posted and thereafter be kept posted at each point of sale.

Section 5. Cost of Administration.

For the purpose of defraying the cost of administering this Code by the Code Authority, all Unit Ice Associations that desire to participate in the operation of this Code to the extent of organizing a Committee of Arbitration and Appeal as

provided in Article X, shall pay annually to the National Association of Ice Industries, for so long as they may continue to participate, a sum of money equivalent to one mill per ton of ice sold during the last previous calendar year by all members of said Unit Ice Association, provided, in the event that such rates produce a fund greater than reasonably necessary to defray the cost, as determined by the Code Authority, of such administration, then, and in such case, such surplus funds shall be proportionately refunded to the Unit Ice Associations or a proper adjustment of the provisions of this Section shall be made. The funds so paid to the National Association of Ice Industries shall be kept separate from the general funds of the Association and shall be expended under direction of the Code Authority for the purpose of defraying expenses of operation of the Code Authority, its agent and employees and of the Regional Advisors.

Section 6. Reports and Investigations.

Such Code Authority shall, subject to the approval of the Administrator, require from any member of the National Association of Ice Industries or members of any Unit Ice Association, organization or group belonging to or subscribing to the National Association of Ice Industries, such reports as are deemed by said Code Authority to be necessary to effectuate the purpose of this Code; and may upon its own initiative or upon complaint of any person affected make investigation of such members to ascertain the function and observance of the provisions of this Code and report the result of such investigation to the Administrator for such action as may be proper under the provisions of the National Industrial Recovery Act, or the rules and regulations promulgated by virtue thereof. The Administrator may, from time to time, require from members of the Ice Industry, who are not members of the National Association of Ice Industries, or of any Unit Ice Association, such reports, and make such investigations of such members of the Industry as he may deem necessary.

In addition to information required to be submitted to the Code Authority, there shall be furnished to government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act.

ARTICLE XI, CONTROL OF PRODUCTION

If at any time an individual, firm, corporation or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory, said party must first establish to the satisfaction of the Administrator that public necessity and convenience require such additional ice making capacity, storage or production. The ice manufactured from any plant that was not in actual operation on September 8, 1933, shall not be sold to any purchasers for a period of twelve months from the date subsequent to September 8, 1933, upon which the operation of such plant may be initiated or resumed, at prices lower than the lowest corresponding prices in good faith published, as required by this Code, in a schedule or schedules governing prices to such purchasers; providing and excepting that this provision will not apply to the sale of ice manufactured by the following:

(a) Plants installed upon authority, of a certificate of necessity and convenience duly issued by the Administrator, or

(b) Plants temporarily shut down for repairs for a period not in excess of twelve months prior to September 8, 1933, or

(c) Plants that were owned or whose output was controlled by companies or operations that were on September 8, 1933, in good faith engaged in the business of selling ice to the general trade in the market in which the ice from such plants is proposed to be sold, such plants being on September 8, 1933, out of

operation because of the intent in good faith to further the economic conduct of the business of such company or operation.

ARTICLE XII, GENERAL PROVISIONS

Section 1. Adjustment of Contracts.

Where the costs of executing contracts, entered into in the Ice Industry prior to the approval of the President of the United States of this Code, are increased by the application of the provisions of that Act to the industry, it is equitable and promotive of the purposes of the National Industrial Recovery Act that appropriate adjustments of such contracts to reflect such increased costs be arrived at by arbitral proceeding or otherwise, and the National Association of Ice Industries, the applicant for this Code, is constituted an agency to assist in effecting such adjustments.

Section 2. Employer Under More than One Code.

If any employer of labor in the Ice Industry is also an employer of labor in any other industry the provisions of this Code shall apply to and affect only that part of his business which is included in the Ice Industry.

Section 3. State Laws.

This Code shall not supersede any law of any State imposing more stringent requirements regulating the age of employees, hours of work, or health, fire or general working conditions, than imposed under this Code.

Section 4. Amendments, Supplements, etc.

Such of the provisions of this Code as are not required to be included therein by the National Industrial Recovery Act may, with the approval of the President, be modified or eliminated as changes in circumstances or experience may indicate. It is contemplated that from time to time supplementary provisions to this Code or additional Codes will be submitted for the approval of the President to prevent unfair competition in price and other unfair competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act consistent with the provisions hereof.

Section 5. President May Modify.

This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Clause 10 (b) Title I of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule or regulation, issued under Title I of said Act, and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

II. EXPLANATIONS AND SUGGESTIONS

INTRODUCTION

PURPOSES OF THIS BULLETIN

The information contained in this bulletin is based upon a four-day conference of the Code Authority and Regional Advisors held in Washington, D.C., for the purpose of making a detailed study of the Ice Industry Code and of its application and administration in compliance with the law and with the policies of the Administration. The conclusions of this conference have been submitted to the Administrator and this bulletin is published with his approval.

This code is a grant of authority of the Federal Government to the Ice Industry to clean its own house. It is, therefore, an appeal to the industry to use its associations, and the agencies established, to the end that it may place itself in a position to do its full share towards improvement of the general welfare.

However, the industry is assured that the Government is ready to come to its rescue with coercive measures wherever these may be necessary to preserve the dignity of the code and to assure the stabilization of ice markets. The code, with the approval of the President, has become a law of the land. It is applicable to all members of the Ice Industry, regardless of their membership or non-membership in associations and regardless of the size of their operations. All members of the industry are of equal importance in the eyes of the law and of the code which is the law.

DISCUSSION AND INTERPRETATION OF PROVISIONS OF THE CODE

In the following discussions, no attempt has been made to comment upon every section of the code but an effort has been made to clarify some of the more vital provisions.

ARTICLE II, MEMBERSHIP

Membership in the National Association of Ice Industries or in one of the unit Ice Associations, is a different thing from what is implied in the expression "Member of the Industry." As stated in the definitions set out in Article III, the member of the industry is anyone engaged in the production, distribution, or selling of ice.

The law and the code declare everyone so engaged, to be a member of the industry, and the law places upon every member of the industry obligations to observe the provisions of the law and of the code.

ARTICLE V, HOURS

The hours and wages provisions of the Code are in the nature of a statement of the consideration the industry undertakes, in return for which is given the assurance of peace and stability through the other provisions of the Code. In fairness, then, the labor provisions must be so interpreted as to bring the industry to carry out its part of this contractual obligation.

OFFICE EMPLOYEES

Office employees are on a basis as to hours different from any other class of employees in the industry. The maximum employment of office employees per week is fixed at forty hours and the maximum employment per day at eight hours. These hours cannot be exceeded regardless of what may be the seasonal demands or the pressure upon the office force at the end of the month or end of the year.

EMPLOYEES OTHER THAN CLERICAL OR SUPERVISORY

Employees, other than clerical and those exercising executive or supervisory functions, shall not be employed for greater than an average of 48 hours per week for the 12 months' period and shall not be employed for more than 56 hours in any one week. These employees are not limited as to hours in any one day but their employment must not under any conditions exceed 56 hours in any one week. Payment of overtime will not make any less serious the violation of this restriction against working these employees in excess of 56 hours within any one week. No exceptions are permitted because of emergencies, rush seasons or other causes.

A different handling of the use of 56-hour weeks must be exercised in the case of the year round employee as distinguished from the season or part-year employee. The year round employee may work for 56 hours per week at any time during the year, provided the average for the individual over 12 months' operation does not exceed 48 hours per week. Therefore, for every 56-hour week put in by the year round employee, there must be, at some time during the year, a corresponding 40-hour week. Likewise, for every 52-hour week there must be a corresponding 44-hour week. Any other balancing of maximum with minimum weeks may be used provided that at the end of the twelve months' period the average is not over 48 hours.

In the case of an employee working only part of a year, the maximum hours should be governed by those in general force in respect to other employees similarly engaged in the particular operation for the season of the year during which he is employed, provided of course that his hours of work per week must at no time exceed 56. It would be a violation of the Code, for example, for a driver working only a few months out of the year to be worked for 56 hours when the majority of other drivers are at the same time working at 48 or some other number of hours per week less than 56. On the other hand, should the other drivers, whether they be year round employees or not, be working 56 hours per week, the driver employed for part of the year only can at the same time be employed for 56 hours per week without violation of the Code.

An employee cannot be worked 56 hours per week continuously on a job for a period of one week or more and then laid off for a corresponding period and the same job be filled with another employee while the first employee is remaining idle in order to bring his average per week to 48.

Similarly, one employee cannot be worked for 56 hours per week or for any other period in excess of 48, and be discharged or laid off in order that another man may succeed him in the same job and be worked in excess of 48 hours per week.

Twenty-six 56-hour weeks per year is the greatest number that can be imposed on one man or utilized on one job.

EMPLOYERS IN MORE THAN ONE INDUSTRY

Employers engaged in two or more industries, should, when practicable, confine an individual employee to one industry, but when this is not practicable, the maximum hours of total employment for each employee must not exceed the maximum hours of the most exacting code.

JULY 15TH RESTRICTION

Employees whose actual hours of work per week were on July 15, 1933, less than the maximum prescribed by the Code will not be worked at any time in excess of the hours per week they actually worked during the week prior to July 15, 1933. This restriction applies, of course, only to employees who were working on a full time basis on July 15, 1933.

HOURS--MANAGERS AND SUPERVISORS

The hours of a manager or supervisor engaged in managerial or supervisory work are not limited. However, this work unlimited as to hours, must be restricted to activities that are primarily managerial or supervisory. The manager or supervisor must comply with the restrictions as to maximum hours when engaged in work, the hours of which are restricted for any employee.

For example: A route foreman qualified and classed as supervisor must comply with the 56-48 hour weekly restrictions while engaged in serving a route. Likewise, a manager cannot exceed the 56-48 hour weekly maximum in hours while engaged in the work of engineer or vaultman. Either the route foreman or the manager, however, may in addition to the limited hours prescribed for regular employees, put in as many hours in supervisory or managerial work as may be desirable.

Every one engaged in the Ice Industry, whether he be owner, partner, stockholder, manager, supervisor, dealer, peddler, or person selling solely on commission will be restricted, while engaged in labor, to the hours prescribed for employees regularly engaged in such labor. In other words, no person within the Ice Industry is free to engage in labor without restrictions as to hours. To the same extent as the hours of employed drivers and station men are restricted while engaged in their respective jobs, so also are restricted the hours during which the individual peddler or dealer can actually operate his routes or his station.

ARTICLE VI, WAGES

Except for executives and supervisors, the wage basis under the code is the rate of pay per hour regardless of whether the employee is paid by the day, the week, or the month. No minimum weekly wage is required except for supervisors.

The hourly rate of pay of no employee can be reduced below the hourly rate on which that employee was paid on July 15, 1933, regardless of whether such employee was being paid by the hour, the day, or the week. In determining what was the hourly rate of pay on July 15, 1933, of an employee who, on that date, was working for a base wage plus a commission, only the base wage need be considered. The provision against payment of an hourly wage at a rate lower than that existing on July 15, 1933, applies to the individual employee and not to the job.

EMPLOYEES ON COMMISSION

Employees whose compensation is made up of a base wage plus a commission, and employees whose compensation is a commission with a guaranteed minimum, must be guaranteed compensation not less than the minimum wage per hour prescribed in the code. Should there be present in the arrangement any understanding or guarantee of a minimum compensation per week, or for other period, the employee must be paid not less than the prescribed minimum wage per hour.

Employees working solely for a commission without any base wage or guarantee of minimum compensation, do not come under the minimum wage provisions, but it

should be borne in mind that they are restricted as to hours, when engaged in work, the hours of which are restricted for employees paid on a wage basis.

Employees who on July 15, 1933, were employed on a salary or wage basis may be changed to a commission basis, but in all such cases such employees must be guaranteed a minimum equal to the hourly wage that they were receiving on July 15, 1933, or the minimum provided in the code, whichever may be the greater. This restriction, of course, does not apply to new employees employed solely upon a commission basis.

ARTICLE IX, ACTS OF UNFAIR COMPETITION

COMMENT UPON UNFAIR PRACTICE PROVISIONS

The unfair practice provisions are the penal code of the Ice Industry. The purpose of these provisions is to define those practices that are of destructive force, and to declare them to be unfair methods of competition, and to give notice to all members of the industry that these practices are violations of the Code and of the law.

UNFAIR PRACTICE PROVISIONS RELATIVE TO PRICES

Certain of the unfair practice provisions are directed against the price abuses that will form most of the competitive problems. In general, the abuses denounced are selling below cost, variations from published schedules, changing of schedules without due notice and posting, discrimination, rebating in some form, false invoicing and commercial bribery. A study of the facts involved in any case of price trickery, evasion or subterfuge, and the application of the unfair practice provisions to such facts, will disclose that any such cases are clearly condemned by one or more of the provisions. In interpreting and applying the provisions relative to prices, it must be kept in mind that it is the purpose of the Code to establish price schedules through filing and posting, and to exact strict observance of them until they be changed upon the required notice.

ANTI-DUMPING PROVISIONS

Stated in simple terms, the inequity sought to be relieved by the anti-dumping provisions is that of the dumping of surplus ice into a market other than that upon which the producer depends for his base income. The following are examples of "surplus ice" often sold in violation of the anti-dumping provisions of the Code:

Ice produced from a creamery, packing house, cold storage plant or brewery after the uses are served for which the ice tanks were installed and are primarily operated.

The surplus remaining in storage or produced from excess capacity after the demands have been met for car icing by a plant built and primarily operated for that purpose.

Surplus produced from excess capacity or remaining in storage after a plant located in a certain and definite market or territory has met the demands of its normal market.

The surplus ice described in the examples given above is not forbidden by the anti-dumping provisions to be sold into new channels or markets. However, it can be moved or sold into channels or markets

outside its normal or basic use, channel, or market, only under condition that the transactions in connection with such movement comply with all of the four restrictions set out as clauses (1), (2), (3), and (4) of the unfair practice provision (1) which is the anti-dumping provision.

ARTICLE X, ADMINISTRATION

The plan set up for the administration of the Code is designed to afford the industry helpful agencies which will enable it to work out most of its competitive problems without resort to coercive measures. The functions of the various agencies extend all the way from the fair advice that will be given competitors by their Committees of Arbitration and Appeal to the great powers given the President. The power of the Government, always standing back of those charged with the duty of setting up and administering the Code, will give dignity and weight to their actions. The first effort in every case should be to settle differences and end abuses through co-operative effort now made legal by the National Industrial Recovery Act. Failing in this, resort must be had to the powers of enforcement set up by the Government to assure the success of the Industrial Recovery Program.

POSTING PRICE SCHEDULES

The Code requires that the initial posting of price schedules shall be made upon the effective date of the Code. Specifically this is October 16, 1933, on which date every member of the Ice Industry throughout the United States is required by law to have posted his price schedules. These schedules must be kept posted until they are changed in compliance with the filing provisions of the Code.

The provision requires that the schedules must be posted at each point of sale. The point of sale is the plant, platform, station or piece of delivery equipment from which the seller makes delivery of ice to the buyer. The schedule should be prominently displayed on the station and plant platforms and should be posted on the right side of delivery equipment. The Code Authority recommends that schedules be printed on cards not less than 10 x 15 inches and that they should be plainly printed in type that can be read at a reasonable distance.

The clear implication and therefore the requirement of the Code is that each schedule must quote the prices made to all classes of service sold from a particular point of sale at which such schedule is posted. For example, at a plant platform from which sales are made to certain platform customers classed as commercial and to domestic platform customers, a schedule must be posted on such platform that quotes prices for each class named. Such schedule need not quote prices to customers served from the delivery routes. Schedules must be posted upon each piece of delivery equipment covering prices to all classes served from that particular piece of equipment. The price to dealers and peddlers must be posted, but this requirement will be satisfied when such prices are prominently posted in the office that is frequented by dealers and peddlers.

It will of course be a violation of this provision to fail to maintain the posted schedules in good condition. Permitting them to become unreadable because of defacing or of exposure to weather will constitute a violation. Therefore these cards, bearing the schedules, must be replaced as often as is necessary to comply with the intent that they be kept posted in such manner as to be easily read by the patronage and the competition. The Code Authority direct that each price schedule be inscribed as follows:

"The above schedule of prices has been filed with the authorities designated by law under the National Industrial Recovery Act on the date subscribed hereon. It is a violation of the law to sell ice at a price different from the price prescribed in duly published schedules. Failure to comply strictly with the above prices is a violation of the law, punishable by a fine of \$500.00 for each offense."

Date.....

Signed.....

The signature required to the above inscription shall be that of the member of the industry who is responsible for posting the schedule. In the case of a corporation, the inscription will be signed by an officer of executive authority. Independent manufacturers, producers, dealers or peddlers are required to sign such inscriptions personally.

The Code Authority has directed that the Committees of Arbitration and Appeal will be held responsible for seeing that all members of the industry within their territory shall comply with the requirements relative to inscription of price schedules.

FILING PRICE SCHEDULES

There are two occasions upon which the Code requires price schedules to be filed. First, when the initial schedules are established as required, they must be filed within 15 days after the effective date of the Code. This means that every member of the industry must file his initial price schedule not later than October 31, 1933. The schedules must be posted at points of sale on or before the effective date which is October 16th, but the filing of them does not have to be made before October 31st.

The other occasion for filing schedules is that incident to the changing of schedules that have been in effect. When a member desires to change schedules under which he has been working, he is required to file the new schedule 15 days in advance of the date upon which it is to become effective. On this occasion, the order is exactly reversed from what it is on the initial filing. That is, at the beginning, the price schedules are posted on the effective date and are filed at any time within 15 days thereafter. Once a schedule is posted it cannot be changed without filing 15 days in advance of its effective date.

All schedules must be filed with the Board of Arbitration and Appeal of the territory within which ice is to be sold in compliance with such schedules. They must be filed with each Board of Arbitration and Appeal having jurisdiction over such territory. For example, an operation extending over the territory of two or more unit associations must file its schedules with the Committee of Arbitration and Appeal of each of such unit associations.

Until further notice, the requirement that the schedules be filed with the Committees of Arbitration and Appeal will be complied with by filing such schedules with the Secretaries of the respective Unit Ice Associations, and the requirement that price schedules be filed with the Code Authority shall be complied with by the filing of such schedules with "The Chairman, Code Authority of the Ice Industry," Mayflower Hotel, Washington, D.C. These schedules must be filed with such Unit Ice Association Secretaries and with the Chairman of the Code Authority by forwarding such schedules by registered mail or by delivering them in person. Return receipts should be requested for such of them as are forwarded by registered mail, and a receipt should be requested when they are delivered in person.

DATA TO BE CONTAINED IN FILED SCHEDULES

Each filed schedule must carry at the top of the first sheet:

- (a) The name and address of the company or individual filing the schedule,
- (b) The market or territory within which the schedule is to be made effective,
- (c) The Committee of Arbitration and Appeal with which the schedule is filed, and
- (d) The date upon which schedule is to become effective.

The date of filing will be the date upon which personal delivery of the schedule is made, or upon which the schedule is deposited with the Post Office.

In the body of the filed schedule, must be shown the classification of transactions and the prices to be applied to each class. All transactions must be shown as coming within one of the following general classifications:

First: **WHOLESALE**, which is defined to include all sales of ice that is to be re-sold. This does not include ice sold under the commercial classification. It does include all ice sold to brokers, dealers, peddlers, station operators, and other plants for re-sale. It is important that there not be included in this classification sales to commercial customers that have been spoken of in many markets as "wholesale."

Second: **COMMERCIAL**, which is defined to include all sales to purchasers who use the ice in connection with their business. This includes restaurants, drug stores, hotels, railroads, fruit and vegetable shippers, dairies, grocery stores, meat markets, and in general all sales of ice that is used in connection with business enterprise.

Third: **DOMESTIC**, which is defined to include all sales to the family trade.

Under each of the above general classifications, the schedules should set out the classes of sales, both for delivered and platform business. For example, under the commercial classification may appear "Dairies, platform 30¢ per one hundred pounds, delivered 40¢ per one hundred pounds," and under the domestic classes, "Platform 40¢ per one hundred pounds, delivered 50¢ per one hundred pounds."

The classifications and prices must, of course, be exactly as carried in the posted schedules.

At the close of the filed schedule, a statement must be carried to the effect that the schedule is filed in compliance with the requirement of the Ice Code and of the Industrial Recovery Act; that the various classifications and prices will be carried in schedules posted as required by the Code; that the filed schedules given are the same in every particular as the posted schedules and that the filed and posted schedules will be observed without evasion or subterfuge, in strict compliance with the provisions of the Code until they are changed upon 15 days' notice to the Committee of Arbitration and Appeal and to the Code Authority. Following this declaration, the document will be signed by an officer of executive capacity in the case of a corporation and by an owner or partner in the case of an individual or a partnership.

The filed schedule must disclose all of the classifications under which ice will be sold within the indicated territory or market by the individual partnership or corporation filing the schedule. No ice may be sold at any time under any other classifications or at any other prices than those shown in duly posted

and filed schedules.

It is ruled that no classifications shall be based on quality alone. That is, no filed or posted schedule shall contain a classification based solely upon, for example, "white ice." This ruling does not prohibit a classification that takes into consideration the fact that the purchasers thereunder may accept ice of under standard quality. For example, the price made to dairies may take into consideration that dairies will accept white or under standard ice. However, once the dairy classification is posted, the price called for thereunder must be charged to all dairymen on all occasions without any discount because on some occasion such purchaser may accept under standard ice.

Prices must be based upon weight and not upon "blocks", "bars" or "cakes".

A classification is permissible that makes a uniformly applied distinction between manufactured and natural ice.

"Contract Ice" is an admissible classification. It must be set out under one of the general heads--commercial or domestic, must state the price, and all purchasers who comply with the contract terms must be granted the privilege of purchasing on the filed and posted terms. All transactions carried out under the classification "contract ice" must also comply with the restrictions generally applicable to contracts as set out in the discussion given below upon the subject of contracts.

To avoid confusion and resultant unstabilized conditions, effort should be made to make uniform the classifications carried in all of the schedules filed by competitors within the same market. The purpose of such effort is to adopt uniform classifications for the market and not to fix the prices at which sales will be made under each of the classifications.

It is within the province of the Committees of Arbitration and Appeal to recommend such details in reference to the size, style, and character of posted schedules as will best serve the purposes of the Code within their territories. In fact it is their duty to transmit to the members of the industry within their territories, such instructions as may be given them by the Code Authority and to make such elaborations thereof as may be thought advisable. They must exercise every reasonable effort to bring about a prompt, effective and impressive compliance with the requirements as to the filing and posting of schedules throughout their territories.

RESPONSIBILITY OF MANUFACTURERS AND PRODUCERS IN REFERENCE TO FILING AND POSTING PRICE SCHEDULES

In addition to the duties of manufacturers and producers to file and post their own schedules, the Code Authority requires that they submit to the Committees of Arbitration and Appeal a list of all dealers and peddlers supplied by them. The first of such lists should be filed October 31, 1933, and thereafter changes in such lists should be reported within the month during which such changes occur or at such other times as may be requested by the Committee of Arbitration and Appeals. The demand for the reports called for in this paragraph is made by the Code Authority under its power to demand, with the approval of the Administrator, such reports as it may believe necessary to effectuate the purposes of the Code and of the Act.

The manufacturers and producers are requested to pass on to the dealers and peddlers served by them, instructions received from the Committees of Arbitration and Appeal; to distribute to their dealers and peddlers such forms as may be helpful in securing a compliance with the filing and posting requirements and in general to aid and instruct their dealers and peddlers in carrying out the requirements as to posting, filing, and compliance with price schedules. The manufacturers and producers are also requested to report to the Committees of Arbitration

and Appeal all dealers or peddlers whom they know to be selling ice in violation of any of the provisions of the Code.

GUARANTEE AGAINST ADVANCES OR PROTECTION AGAINST DECLINE

Unfair Practice Provision No. h prohibits making guarantees against advance or protection against decline in prices. This provision has far-reaching effect upon the price policies of all members of the industry. One of its purposes is to eliminate commitments that will result in giving preference to customers in case the schedule of prices existing at the time such commitments were made should be changed. Such commitments, usually made to the larger commercial users, have always been an evil in the competitive markets. They will become intolerable under a code of fair practices that requires all purchasers of the same class to receive the same treatment under existing or a changed price schedule. Therefore, after the effective date of the Code, no commitments verbal, written, or otherwise, will be permitted that give any customers preferential treatment as to prices during the effective period of the current posted price schedule or that will prevent the price to any customer from being changed to that which will be made to all customers of the same class under a new or changed schedule.

Following the ruling given in the above paragraph, all quotations for future acceptance should carry a provision to the effect that the prices quoted are subject to change to comply with schedules posted and in effect at the time the contemplated sales are to be completed.
